

ORIGINAL

OFFICIAL FILE
ILLINOIS COMMERCE COMMISSION

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

ILLINOIS
COMMERCE COMMISSION

2002 SEP 18 A 10:51

Docket No. 02-0249
CHIEF CLERK'S OFFICE

Yaodi Hu,

vs.

Illinois Power Company.

Illinois Power Company's Response to Emergency Motion for Injunction

Pursuant to Administrative Law Judge Jones' scheduling order of August 28, 2002, Illinois Power Company ("Illinois Power") hereby files its Response to the Complainant Yaodi Hu's (hereinafter "Mr. Hu") Emergency Motion for Injunction (hereinafter "Injunction Motion").

I. Background

On April 8, 2002, Mr. Hu filed the above-captioned Formal Complaint against Respondent Illinois Power Company ("Illinois Power") wherein he alleges that Illinois Power refused to electric power to certain locations (hereinafter "Requested Premises¹"). More specifically, Mr. Hu alleges that Illinois Power is indirectly forcing him to convert certain electric work, converting three service drops into one service drop, at the Requested Premises. Mr. Hu's request for relief includes an equitable remedy of having the Commission direct Illinois Power to supply electric and gas to the locations. On July 9, 2002, Mr. Hu amended his complaint to include additional allegations; however, all of the allegations relate to his original Complaint insofar as he continued to allege that Illinois Power was refusing to supply electricity by requiring "three service drop (sic) into one service and transferring all meters and disconnect to outside of building." Amended Complaint, ¶ 5.

¹ Mr. Hu describes the Requested Premises as business premises located at 428-432 E. Main St. Danville, Illinois 61832. See Complaint, p. 1, Amended Complaint, p. 1, and Emergency Motion of Injunction, p. 1.

On July 9, 2002, a Status Hearing was held to establish a discovery schedule. The Parties agreed that informational requests would be made on or before July 23, 2002, and response to such informational requests would be provided on or before August 20, 2002. On July 23, 2002, Illinois Power requested that Mr. Hu provide certain information regarding his complaint; however, no such information was provided prior to August 20, 2002. Subsequently, at the August 28, 2002, Status Hearing, the Parties agreed to that Mr. Hu would provide the requested information on or before September 11, 2002.

On August 28, 2002, Mr. Hu filed his Injunction Motion wherein he states that “[t]he gist of the entire case is that Illinois Power wants to have all the electrical meters to be located outside of the subject property through one service drop.” See Injunction Motion, p. 1. Mr. Hu requests that the Commission issue an injunction “enjoining Illinois Power and the City of Danville from requiring the Complainant relocating (sic) the main disconnect and installing a 400 AMP electrical service meter outside the building.” See Injunction Motion, p. 3. However, Mr. Hu does not provide any statutory provision which would allow the Commission to grant to relief requested in his Injunction Motion. Furthermore, Mr. Hu generally asserts that he will suffer “irreparable harm based on the action of Illinois Power,” but does not articulate with any specificity the harm which he alleges. See Injunction Motion, p. 3.

II. Standard of Review

The Complainant does not point to any authority which would allow the Commission to grant temporary, permanent, or preliminary injunctions in the manner he requests. Moreover, even if the Commission were able to issue such an injunction, it would be inappropriate in this case. Under Illinois law, the standards for issuing a

preliminary injunction involves a review of a variety of circumstances, but generally the court must be satisfied of the need for such relief and the probability that the requesting party will be successful on the merits. Moreover, a preliminary injunction is an extraordinary remedy which should be granted with the utmost care. Schwalm Electronics, Inc. v. Electrical Products Corp., 14 Ill. App. 3d 348, 302 N.E.2d 394 (1973); Mars, Inc. v. Curtiss Candy Co., 8 Ill. App. 3d 338, 290 N.E.2d 701 (1972). Preliminary injunction serve the purpose of preserving the status quo pending disposition of the case on the merits. Edgewater Construction Co. v. Percy Wilson Mortgage & Finance Corp., 44 Ill. App. 3d 220, 357 N.E.2d 1307 (1976).

III. Argument

Based on the allegations² made in the Injunction Motion, Mr. Hu takes issue with the fact that “the City of Danville ‘condemned’ the building declaring that the property is an electrical hazard until all the meters and the main disconnect are relocated outside the building as requested by Illinois Power.” Injunction Motion, p. 2. Mr. Hu alleges that Illinois Power is somehow responsible because of “its partner[ship] with City of Danville.” *Id.* However, Mr. Hu has no evidence of the existence of any “partnership.” See Exhibit 1, Response to Illinois Power Company Data Request 3. Indeed, Mr. Hu’s entire Injunction Motion is not supported by any evidence. Accordingly, Illinois Power requests that the Commission deny Mr. Hu’s Emergency Motion for Injunction and continue to proceed under the current schedule to allow all parties an opportunity to obtain the necessary information to present its side on the issues at hand.

Likewise, the Commission should deny Mr. Hu’s request as he seeks a change in the status quo. Mr. Hu apparently has unilaterally decided that the Requested Premises meets all

² Illinois Power views Mr. Hu’s entire Injunction Motion as mere allegations as there is no evidentiary support for any of the purported fact, and the motion was not verified.

applicable codes and Illinois Power's standards necessary to be energized. First, based on the representations made by Mr. Hu in his pleadings, it is the City of Danville that is requesting that "all the meters and the main disconnect [be] relocated outside the building . . ." Injunction Motion, p. 2; see also, Exhibit 2, Response to Illinois Power's Data Request 1, Letter from City of Danville dated June 4, 2002. Under the Illinois Power Company's Rules, Regulations and Conditions Applying to Electric Service (hereinafter "Electric Rules"):

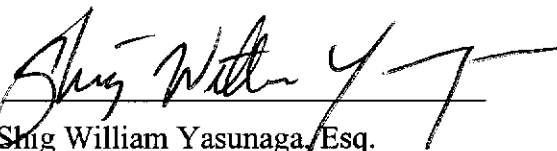
Upon acceptance of an application, electric service may be energized only after any applicable required approvals by public authorities, insurance inspectors, or others have first been obtained by Customer, and installation satisfies the requirements of Utility.

Electric Rules, § 2.1 (Emphasis added).

Even assuming Illinois Power is requiring certain measures to be taken to insure safe and reliable service, such requirements are consistent with Illinois Power's Electric Rules and sound public policy. See Electric Rules § 2.1 ("Utility shall have the right to reject any application for service or to terminate service to any Customer whose premises, in the judgment of Utility, are dangerous to persons or are otherwise unsafe in the vicinity of Utility's meter or other facilities." (Emphasis added)). ("An application may be rejected for any of the following reasons: . . . (b) Service to Applicant would involve extraordinary hazards to Utility's employees or equipment, or to the public."). At this point, there is clearly a dispute as to whether the conditions at the Requested Premises are safe and what is being requested by whom. Although Mr. Hu believes that the conditions are safe, Illinois Power contends that such determination may be the "gist" of this case. At this point Mr. Hu has not brought forth any evidence to demonstrate that he will be successful on the merits. In fact, it is clear that Illinois Power is operating in a manner consistent with its Electric Rules and safety concerns and cannot energize the Requested Premises until it is satisfied that the

facilities are in a safe and reliable condition. Accordingly, Illinois Power requests that the Commission deny Mr. Hu's Emergency Motion for Injunction.

Respectfully submitted,

By: 

Shig William Yasunaga, Esq.

Illinois Power Company

500 S. 27th Street

Decatur, Illinois 62521-2200

Telephone: (217) 424-7050

Facsimile: (217) 362-7458

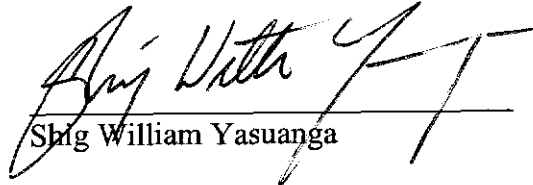
Shig_Yasunaga@illinoispower.com

Dated: September 17, 2002

CERTIFICATE OF SERVICE

I, Shig William Yasuanga, certify that on the 17th day of September, 2002, I served a copy of Illinois Power Company's Response to Emergency Motion for Injunction by first class mail from Decatur, Illinois, postage prepaid to:

Yaodi Hu
428 E. Main St.
Danville, Illinois 6832


Shig William Yasuanga

Dated: September 17, 2002